YAT BOON TIA & ANOR

v.

TENG SUN TONG & ORS

HIGH COURT MALAYA, KOTA BHARU
SURIYADI HALIM OMAR J
[CIVIL APPEAL NO: 22-128-93]
13 FEBRUARY 2000

SUCCESSION: *Distribution of estate - Entitlement to intestate's estate - Children of 1st marriage - Whether entitled to equal share thereof with those of 2nd marriage - Transfer of property by surviving husband of 2nd marriage to his children - Whether transfer thereof valid - Distribution Act 1958, s. 6 - Whether doctrine of equity applicable - Whether children of 2nd marriage acquired indefeasible titles - Whether fraud proven*

The plaintiffs filed an action against the defendants claiming that they had been left out of the registration of a property of one Chua Mek Yap ('deceased'). The plaintiffs were the children of the deceased from her 1st marriage whereas the defendants were those from her 2nd marriage. The deceased died intestate and the surviving husband of the 2nd marriage, one Theng Eh Hun, successfully transferred the said property to his name. He later registered the said property in the name of his six children. Hence, this plaintiffs' action.

The plaintiffs alleged that as they were also the next of kin of the deceased, they were entitled to an equal share of the said property. The premise of the action was equity.

Held:

[1] With no will executed and no property bequeathed to them, the plaintiffs had lost nothing and suffered no financial loss. After the death of the deceased the nexus between the surviving husband and the plaintiffs were merely that of stepfather and stepchildren. As the latter were not natural children, they were not statutorily entitled to any portion of Theng Eh Hun's estate in any event. Without any rights having been infringed, the factor of any intervening doctrine could never arise let alone a remedy be meted out.

[2] Section 6 of the Distribution Act 1958 clearly states that in the event a non-Muslim wife dies intestate, the surviving husband is entitled to acquire the whole property left behind. However, inequitable, harsh, absurd or contrary to common sense, the repercussion of the above provision must still be enforced.

[3] As the defendants were the registered owners, their titles were indefeasible capable of being defeated only by proof of fraud. The pleadings by which parties were bound were totally devoid of any allegation of fraud committed by the defendants or by the transferor father.

[3a] In the circumstances of the case, the term "fraud" must be presumed to be used with the particular meaning with which it is used and understood in the context of the matter at hand, *ie*, land dealings. Based on the scanty facts, the defendants could not even have known that they had been registered as owners, let alone commit fraud. Further, the plaintiffs had failed to establish fraud on the part of Theng Eh Hun as his rights were statute based (s. 6 of the Distribution Act 1958).

[4] The plaintiff's action was filed on 20 November 1993, about 18 years after the surviving husband of the deceased had registered himself as the owner and about 10 years after the defendants had acquired their indefeasible titles. That inordinate and inexcusable delay would prejudice the latter's interest.

[5] In view of the above, there was no infringement of equitable rights and the interests of the defendants was well protected by the National Land Code 1965.

[Action dismissed.]

Case(s) referred to:
Cartledge v. E Jopling & Sons Ltd [1963] AC 758 ***(refd)***
Crabb v. Arun District Council [1976] Ch 179 ***(refd)***
Letchumanan Chettiar v. Palaniappa Chettiar [1978] 1 MLJ 120 ***(refd)***
Magor and St. Mellons RDC v. Newport Corporation [1952] AC 189 ***(refd)***
Motor Emporium v. Arumugam [1933] MLJ 276 ***(refd)***
Re Sharpe (A Bankruptcy) [1980] 1 WLR 219 ***(refd)***
Sutters v. Briggs [1922] 1 AC 1 ***(refd)***
Unwin v. Hanson [1891] 2 QB 115 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 3
Distribution Act 1958, s. 6
National Land Code 1965, s. 340

Other source(s) referred to:
Maxwell On The Interpretation Of Statutes, 12 edn, pp 236, 237

For the plaintiffs - C Jegathesan; M/s Syarikat C Jegathesan
For the defendants - Benedict Cheang Chu Yong; M/s Syarikat Benedict Cheang, Naziruddin

Reported by Usha Thiagarajah

JUDGMENT

Suriyadi Halim Omar J:

Chua Mek Yap (hereinafter referred to as "the deceased"), was initially married to one Yap Eh Soon, but divorced sometime in 1945. That marriage was blessed with two children *viz*, the current plaintiffs. After that divorce she remarried one Theng Eh Hun, and was further blessed with six other children, the current defendants. Prior to the second marriage, the deceased was already the owner of a piece of land registered as Lot No. 59 Mukim Wakaf Baru, Jajahan Tumpat, Negeri Kelantan (hereinafter referred to as "the said property"). She died intestate in 1970. The surviving husband, subsequently pursuant to a small estate claim *vide* Bil: (8) dlm. PKT 98/75 successfully transferred the said property to his name, sometime on 5 June 1976. He later registered the said property in the name of his six children sometime in 1983.

The plaintiffs, being dissatisfied at being left out of the registration of the said property, filed this civil action. The plaintiffs alleged that as they were also next of kin, they were thus entitled to an equal share of the said property. The methodology of circumventing the current predicament was by having the court issue an order that the said property be reverted to the estate of the deceased, and thereafter redistributed equally among the siblings. The premise of the action, as ventilated by the plaintiffs, was equity.

It cannot be said that equity has no role in Malaysia, as courts have consistently invoked it, either referring to it as equity, natural justice, or whatever name appropriate at that juncture (*Motor Emporium v. Arumugam* [1933] MLJ 276). The Civil Law Act 1956 (Act 67) even promulgates under s. 3 that the United Kingdom's common law and rules of equity are applicable in Malaysia but subject to the sensitivities of the respective areas and inhabitants. The applicability, on the other hand, is subject to those rules administered in England on 7 April 1956. The doctrine of equity, which has its origin from the Latin term of *aequus* (fair), could safely be said to have its foundation on the desire to remedy the defects of common law, and mitigate the rigours of strict laws (*Crabb v. Arun District Council* [1976] Ch 179). By virtue of the claimed superior sanctity inherent in the distinct principles of this doctrine, evolved by the court of Chancery of England, the civil law is superseded.

Despite the above consideration, and wide ranging powers available to a judge, with particular reference to the present case, equity generally is a right (if any) exercised by an aggrieved party against the holder of the legal estate, but not the estate. In other words, to succeed in this case, even before any approach is made to dismantle the statutorily protected indefeasible titles of the defendants, that equity factor must be established beforehand. Having established that right, the next stage will see the determination of the remedy of that equity by the court, unless short-lived by some other obstacle e.g. statutory impediment as in this case.

The submission of the plaintiffs to a large extent was confusing. It was unclear what was supposed to be unfair that ought to be put right by the ventilated doctrine. Was it the inequitable distribution or the inequities that permeated the Distribution Act of 1958, applicable only to non-Muslims? Regardless of that uncertainty I shall endeavour to cover both scenarios.

I begin by posing the question whether the plaintiffs suffered any infringement of personal rights (*Re Sharpe (A Bankruptcy)* [1980] 1 WLR 219). To answer this question it is necessary for me to resolve a few preliminary issues at the outset, a course of action that entails going back in time, to the day when the plaintiffs' mother died. Regretfully, and agreed by all, she never executed any will. Without further ado, I must state that, as to why the deceased did not prepare a will is of no concern of mine. In fact if she had left a will, and bequeathed all her properties to whomsoever she wished, that too would have been of no concern to me (*Letchumanan Chettiar v. Palaniappa Chettiar* [1978] 1 MLJ 120). With no will executed and no property bequeathed to them, the plaintiffs therefore had lost nothing and thus had suffered no financial loss. After the death of the deceased the nexus between the surviving husband and the plaintiffs were merely that of stepfather and stepchildren. As the latter were not natural children, they were thus not statutorily entitled to any portion of Theng Eh Hun's estate in any event. Again, by this equation, conclusively the rights of the plaintiffs had not been infringed. Without any rights having been infringed, the factor of any intervening doctrine could never arise let alone a remedy to be meted by me. If I may be permitted to hypothesize by analogy too, if the plaintiffs were permitted to question the current situation, and succeed, then if a will were to have been executed by a benefactor, unless the latter were proved to be of unsound mind when executing it, an aggrieved party could likewise still pose the same challenge. In other words, the clear intention of a will and statute is no guarantee, as it may be defeated by this doctrine of equity. Surely this is never the intention of Parliament, or for that matter the desired purpose of the doctrine.

I now touch on the question of the supposed inequities of the Distribution Act 1958. As the deceased had died intestate, the pertinent provision is s. 6. It reads:

> 6. Succession to intestate estates.
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> (1) After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, be distributed in the manner or be held on the trust mentioned in this section, namely –
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> (i) If a woman dies intestate leaving a husband, the whole of her estate shall go to him.

From the above provision, it is quite clear that in the event a non-Muslim wife dies intestate, the surviving husband is entitled to acquire the whole property left behind. However inequitable, harsh or absurd or contrary to common sense, the repercussion of the above provision must still be enforced (*Cartledge v. E Jopling & Sons Ltd* [1963] AC 758; *Magor and St. Mellons RDC v. Newport Corporation* [1952] AC 189). The words are too clear for argument and the remedy of resolving any inequities should be left to Parliament (*Sutters v. Briggs* [1922] 1 AC 1). The doctrine of equity of a statute, which had its heyday during the sixteenth century, mercifully currently has very few supporters. *Maxwell On The Interpretation Of Statutes*, 12 edn, at p. 236 even had occasion to author;

> Older works, however, use the term "equitable construction" in a much broader sense ... Equity, according to Plowden, "enlarges or diminishes the letter according to its discretion ... Experience shows us that no lawmakers can foresee all things which may happen, and therefore it is fit that if there be any defect in the law, it should be reformed by equity.

At p. 237, Maxwell after some discussion wrote:

> This kind of construction would not be tolerated today. It was condemned by Sir Francis Bacon ... .Lord Tenterden lamented it, and pronounced it dangerous, and it may be considered as altogether discarded in the construction of modern statutes ... .

Having resolved the issue of the supposed inequitable distribution, I now broach the matter of the indefeasible titles of the defendants. As the defendants are the registered owners then their titles are indefeasible, capable of being defeated only by proof of fraud. The relevant provision is s. 340 of the National Land Code 1965, and it reads:

a (1) The title or interest of any person or body for the time being registered as proprietor of any land ... is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible –

b (a) in any case of fraud ...

Authorities abound requiring any aggrieved party wishing to vitiate the title to prove its allegation on the basis of beyond reasonable doubt. As it were in this case, the pleadings by which parties were bound were totally devoid of c any allegation of fraud committed by the defendants, or by the transferor father. In the circumstances of the case, the term "fraud", must be presumed to be used with the particular meaning with which it is used and understood in the context of the matter at hand *ie*, land dealings (*Unwin v. Hanson* [1891] 2 QB 115). As far as I was concerned, based on the scanty facts, the d defendants could not even have known that they had been registered as owners, let alone commit fraud. Even if I were to retrace my steps all the way back to 5 June 1975, I would still conclude that the plaintiffs had failed to establish fraud on the part of Theng Eh Hun, as his rights were statute based (s. 6 of the Distribution Act 1958).

e A further consideration, which held my attention, was the issue of delay. In this case the plaintiffs certainly took their time to file this action. It was filed on 20 November 1993, about 18 years after the surviving husband of the deceased had registered himself as the owner, and about ten years after the defendants had acquired their indefeasible titles. Surely this inordinate and f inexcusable delay would prejudice the latter's interest.

To summarise, there was no infringement of equitable rights that the plaintiffs' could cry out, what more with the interests of the defendants being well protected by the National Land Code 1965. On those grounds I had no hesitation in dismissing this action with costs.

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